

APPROVED

**CONSERVATION COMMISSION MEETING  
JUNE 1, 2015 @ CITY HALL AUDITORIUM  
62 FRIEND STREET, AMESBURY, MA.  
MEETING SCHEDULED FOR 6:30 PM  
MEETING CALLED TO ORDER AT 6:52 P.M.**

**PRESENT:** Steve Langlois, Kinsey Boehl, Michael Bik, Alan Corey

**ABSENT:** Suzanne Egan

**ALSO PRESENT:** John Lopez, Agent; Paul Bibaud, Recording Secretary

**MINUTES: MAY 4, 2015 Motion was made by Michael Bik to accept the minutes as presented. Motion was seconded by Alan Corey. Vote was unanimous to approve.**

**ADMINISTRATION:**

**Enforcement Order/Cease and Desist – Route 495 S (MaDot)**

**John Lopez:** No one is here from DOT. This is an Enforcement Order that was issued pursuant to the unauthorized activities that required an Order of Conditions. If in fact the commission would approve such work, this is for the unauthorized dredging and filling of a bordering vegetated wetland, and the unauthorized breeching of a beaver dam. The violations would be to MA General Laws 131, Section 40, the Wetlands Protection Act, the Amesbury Wetlands Ordinance, as well as MA General Laws Chapter 131, Section 80A: Protocol and regulations pursuant to breeching a beaver dam. ConCom has a copy of the EO. Various stipulations were made, all of which have been met to date, in terms of submitting the ConCom with retaining an environmental consultant, to be submitted on letterhead, which was done. The site has been stabilized with erosion control, and the DEP requests that the ConCom hold an inter-meeting between now and their July meeting to approve a draft restoration plan that DOT is to submit. The draft time is June 17<sup>th</sup>, Steve, Michael and possibly Kinsey believe they can attend, Wednesday at 8:30 a.m. at city hall auditorium. This is an administrative hearing to approve a plan pursuant to an EO, and all we're looking for is a quorum. So can three commissioners be available to appear at that time to review and approve the draft restoration plan? It should be pointed out that the EO stipulated that a representative from DOT attend this meeting tonight. No one is present.

I will make a phone call to find out why they were not here.

**Motion was made to approve the EO which was issued by Kinsey Boehl and seconded by Michael Bik. All in favor.**

**Continued to 6-17-2015 at an 8:30 A.M. special meeting**

**Enforcement Order/Cease and Desist – 37 Middle Road - (Anderson)**

**John Lopez:** This concerns the unauthorized filling of isolated vegetated wetland pursuant to the Amesbury Wetlands ordinance. The ConCom required that a restoration plan be submitted and that was done. The applicant's representative is here.

**Bob Prokop, Wetland Consulting Services:** In early May, we submitted a restoration plan to replant the wetland area per the existing grading plan. A Cease and Desist was issued to the applicant when they started to regrade an area of wetland, but that area that was being regarded was already shown to be regarded in the originally approved plan. So we have agreed, however, to still provide a grading plan based on the current and approved grading plan, which was meant as an addendum to the already approved landscape plan for the subdivision. So the new plan involves planting an addition for tree saplings, and 21 shrubs that were selected based on the finished grading plan. Hopefully, this will satisfy the ConCom's concerns regarding the area that was disturbed.

**John Lopez:** So if ConCom agrees, one amendment I would make is that a two year monitoring period be included for any plant approved under this EO that fails to thrive would just be replaced. The applicant's representative would submit a monitoring report at the end of that time period, documenting results. Procedurally, the EO would have to be modified to allow for the implementation of this plan. Other than that, I think this is a fine compromise and fine solution to the problem. Also, if ConCom agrees, the important thing for the applicant is that the Cease and Desist order would be removed and the applicant can proceed.

**Motion was made by Kinsey Boehl to lift the Cease and Desist Order and also including a 2 year monitoring period on all plantings at the end of 2 years of replanting. Second was by Michael Bik. Vote was all in favor.**

**Enforcement Order – 97 Whitehall Road – (Scarfo)**

**Commissioner Boehl recused himself.**

**John Lopez:** This is an EO which was issued for the unauthorized work done without an OoC for the removal of an existing asphalt driveway or portions thereof and the installation and removal of grass, and the installation of stone to serve for what I assume is a driveway. EO was issued and the applicant received it today.

**Ray Scarfo, 97 Whitehall Road:** I purchased the property last September and noticed an asphalt driveway that went about 75 feet down towards within 7 feet from the lake. I wanted to remove the asphalt driveway and fill it in with stones, and edge it off with solid blocks all the way down to contain the stone. I didn't know that I had to file certain paperwork to do that. It wasn't a structure or anything, but I pulled a permit for work I was doing on the house, which I thought was probably covered under that. Basically that is it. I'm willing to file all the necessary paperwork that I have to do.

**John Lopez:** The draft EO which would have to be approved or approve as amended by the ConCom requires the applicant to submit a NOI for the work by June 15th for the July 6th meeting. I elected not to issue a Cease and Desist provision because we were dealing with a significant amount of exposed soils, and I thought if we have weather like today, it is best to allow the applicant to continue the work to cover those exposed soils, so we don't have any sediment running into Lake Attitash. Also from the photographs I sent you, you see the property owner did take precautions, installing erosion control at the foot of the work area for the bank and the lake, to keep sediments from entering in. One caveat, the regulations stipulate that no driveway can come any closer than 25 feet to a protected resource, in this case, Lake Gardner. So the NOI requires the applicant to

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submit plans with dimensions and where things are located, so that probably could be addressed through that. If there is a hardship, there is no other way that the applicant can avoid that, then a waiver can be requested. But for now, the EO, I ask that you ratify it, and requiring the property owner to submit an NOI by June 15, 2015, for the July 6<sup>th</sup> meeting.

**Motion was made by Alan Corey to accept and approve the EO for 97 Whitehall Road, and that the applicant submit an NOI by June 15th for the July 6<sup>th</sup> meeting. Motion was seconded by Michael Bik. AIF with Mr. Boehl recused.**

### **Enforcement Order/Cease and Desist- 54 Pleasant Valley Road**

**John Lopez:** This is an EO that was issued pursuant to the unauthorized placement of rip rap on a protected resource (Merrimac River riparian bank) in violation of the Massachusetts General Laws 131, Section 40 and the Amesbury Wetlands regulations. The ConCom has received photographs of this as well, and this is a significant issue for DEP, who reviewed the draft EO. You'll see that in the attachment to the EO a number of stipulations. I ask the ConCom to approve this. Some of the complicated issues here would be the placement of the rip rap what appears to be within a salt marsh, which is land under a water body. DEP would like the property owner to submit, once the rip rap is removed, proof of retaining an environmental consultant, and to submit a draft restoration plan to the ConCom. The dates are stipulated in the order of conditions. This would all be heading toward a continuance to the July 6 meeting. When I brought this to the property owner's attention, he was made aware of this by subsequent conversation with the property owner, I was pleasantly surprised to hear the property owner intelligently talk about alternative approaches to rip rap. Since rip rap deflects energy, something like a fiber core logs absorb energy. So he gets it. He is here tonight.

**Matt Chapin, 54 Pleasant Valley Road:** We moved into the house at the end of 2006. We noticed there is exposed edge to the water. That particular area where I placed rip rap was about 20 feet in length, roughly.

**Alan Corey:** Here is a photo of the rip rap that was put in. Here is a photo from the other side showing that there already was some, he just put a very small amount on that side. Here is the rest of the property showing that the rip rap is in a very tiny area. I live 2 houses up from this. I looked at it, and it is a very small amount of rock that he put in, and I know he didn't know about it.

**John Lopez:** I've been out to the site twice. Some of the photos I've taken show evidence that there is a salt marsh underneath, and I can only reiterate that this is a serious issue for DEP. There are many issues here, one of which is deflected energy. So rip rap has a tendency to accelerate erosion around the area, other than having some sort of more natural bank stabilization that absorbs the energy rather than deflect it. So in the EO, the draft order that you see, the property owners are asked to submit a letter stating that they will comply with the EO. That should be received by ConCom by June 10<sup>th</sup>. Property owners shall retain a wetlands scientist to conduct an assessment of damage, if any. The letter shall include the scope of work to be performed, in accordance with the EO, which would require removal of the rip rap, to be done by June 19<sup>th</sup>. The wetland scientist shall immediately identify all jurisdictional wetland resource areas, including bank, land under water bodies, and waterways, and salt marsh. That would be done by June 19<sup>th</sup>. Then followed by a written report describing the following work: including sequence and schedule removal of the black liner and rip rap on the bank, and land under

water bodies, and the restoration of the altered bank. This would all be continued to the July 6<sup>th</sup> meeting.

**Kinsey Boehl:** Where the water comes up to the dock area, is that tidal?

**John Lopez:** Yes. So a lot of the rip rap that you see is submerged at high tide, and also the vegetation.

**Matt Chapin:** I would say excluding moon rivers and spring high tides.

**Alan Corey:** I'd like to say a few more things: I walk that bank at low tide, and I walk by Matt's house, there is trash, tires, garbage anywhere. We don't give these people an EO to remove the garbage, which is covering all of the vegetation along the beach. The boats going up and down the river that cause wakes which caused him to put that in because he was losing part of his land. This is bothersome to me that because he put a few rocks in there, and he has to go through all of this trouble. I don't think this is a fair deal.

**Steve Langlois:** John, what generates an enforcement order?

**John Lopez:** Activity which would require approval by this commission and the DEP.

**Steve Langlois:** OK, but you sight enforcement orders before we have a meeting.

Example: there is this person who has garbage all over the shoreline. What would it take for an EO to go out against a person like that? Does someone have to make a phone call, or does someone write to ConCom to let us know about it?

**John Lopez:** I suppose if I saw the individual, I could ask him...

**Steve Langlois:** What about a neighbor, saying someone dumps trash on the shoreline. All it takes is a phone call?

**John Lopez:** Yes.

**Steve Langlois:** So if anybody sees something like that, they should let ConCom know.

**John Lopez:** Yes. So I ask that something like an environmental scientist provide me with something by the 19 of June. So we need the property owner to acknowledge this by June 10<sup>th</sup>, the property owner to retain an environmental consultant and to submit a copy of such on letterhead by June 19<sup>th</sup>, and to submit a plan of action by June 19<sup>th</sup>. It stipulates what the plan of action should include, and with the idea that this will be addressed at the July 6<sup>th</sup> meeting. I'd like to reiterate that this is my EO that I worked on with DEP, but it's a draft. If ConCom feels no violations have taken place, you don't have to approve it. The EO was generated by an individual bringing this issue to my attention. I receive a lot of phone calls by people notifying me, and once notified, I am legally obligated to act.

**Alan Corey:** Instead of an EO, would a simple NOI for the next meeting be acceptable? He's already ceased and desisted. He's stopped.

**John Lopez:** If ConCom feels that what was done is permissible, and no offences have taken place, then ConCom can require a NOI for the work already done. That would require the NOI and they'd have to determine what the delineation is and what the jurisdictional resources are.

**Steve Langlois:** Why are we deviating? We're trying to protect the resource.

**Kinsey Boehl:** Alan was just suggesting another option.

**Alan Corey:** Right, because when I see what was done and I see what else is happening along that bank, it seems like it is a little harsh. I know there are rules that have to be followed.

**John Lopez:** There are also federal laws here which are above our level, such as the Water Pollution Control Act, and in 1972 as amended, the clean water act. So this is an issue that will require army corps of engineers review, as well. Under an NOI, this would require DEP review, Army Corps of Engineers review, and the review of three tribal



governments. They would have the option to review; they don't have anyone to do it. The Merrimac River is a navigable waterway in the U.S. protected under the Congress Clause of the Constitution, so it involves a whole set of federal laws as well.

**Motion was made by Kinsey Boehl to approve the EO, that an environmental assessment be made, and a restoration plan be submitted by the dates in the EO to remove the riprap and restore the area.**

**John Lopez:** To clarify, there would have to be a plan submitted to remove the rip rap, then to conduct an assessment as to what the impact to the salt marsh was, with recommendations if warranted to restore the salt marsh. Most likely, the salt marsh will restore itself, but it is still something that the department would like to have.

**Kinsey Boehl:** Per the EO, just do everything that it says.

**Matt Chapin:** I've not seen the EO until now.

**Motion was seconded by Michael Bik. Vote was all yes with one no from Alan Corey.**

#### **BRIEFING: Powow River Watershed – Proposal to Heighten Protected Status (LaBranche)**

**Julie LaBranche, Senior Planner, Rockingham Planning Commission and the Southeast N.H.** I will pass out this map which shows that we have 27 communities in our jurisdiction, roughly Rockingham County, but a few in and a few out. Eight of the communities in our jurisdiction are actually located outside of NH's coastal waters, which is one of our largest areas, the southeast coastal watershed. We've long wanted to work with communities in the Powow River and Merrimac River watersheds on water quality issues and watershed management issues. But the majority of federal funding gets funneled to our coastal watershed because it is an estuary like Great Bay, and that receives a lot of attention, unlike our little orphan child, the powwow River watershed, which makes up a very small portion of our region. So we participated in the last couple of years in a work group spearheaded by the Society for Protection of NH Forests, to form a two state working group with MA and NH representatives. The effort was to develop the land conservation plan for the Merrimac Watershed, similar to a plan that was developed years ago for coastal watershed. It goes through a process of prioritizing and scoring, and ranks certain resources within the watershed, and ranks the land where those resources exist. So things like aquifers, sensitive habitat, rare species, drinking water sources and other types of water resource type activities and assets.

In part of that effort, the conversations were interesting, and folks who have interest cross border in the Powow watershed became aware quickly that the Powow is one of interest to many people. Including Rockingham Planning Commission, Essex County Greenbelt, Suffolk Land Trust and Merrimac River Water Council. It has incredible resources, like drinking water protection qualities to protect the water supply for Amesbury, but also has incredible habitat as well as development pressure right now, with all the undeveloped land and agricultural land that could be developed, and we see it being afflicted by many water quality issues. Several of the larger water bodies like ponds are actually impaired waters. Several communities in NH are under the EPA MS4 permit. Those communities will soon have to start taking action on water quality issues in the Powow. It is the perfect storm right now to go after some funding to bring together a by-state group to start talking about this. I reached out to several people and everyone seemed very interested in getting a cross border initiative going. So I wanted to pitch the idea to you and see if you are interested. I'll be preparing a proposal in June and early July to provide it to anyone

we see as perspective partners and asking for letters of support on that effort. We're looking for seed money to start work on issues of the watershed, and start to frame what a management plan might look like across border, and what would be necessary to implement such an arrangement. We reached out to EPA and they seem very interested in this project. It all looks very promising. It's a heavy lift, but the Merrimac River group has shown that cross border cooperation is very do-able. We have lots of resources, lots known about the Powow, lots of data and information, so we need to formalize a relationship and move this forward.

**John Lopez:** I think this dovetails into the earlier discussion on Woodsom Farm quite nicely.

**Julie LaBranche:** Absolutely. It is something that has been talked about in NH for many years, and it is finally starting because of the Merrimac River cooperation.

**Steve Langlois:** Where would seed money come from in Massachusetts?

**Julie LaBranche:** We're looking at groups like Greenbelt, the Merrimac Watershed Council, whether it be cash or in kind services that they could provide. I haven't reached out to my source water counterpart at DEP yet, but it's on my To Do List. I think the upfront stuff could be funded easily with \$20K, but we'd be asking for partners, like this ConCom, to help us by commenting on documents and frameworks that we might come up with, along with attending some meetings, through in kind volunteerism.

**Kinsey Boehl:** I believe the town of Merrimac also gets its water from there, also.

**Julie LaBranche:** Great. I'll reach out to them also. So it's just an idea right now, but an idea that has peaked a lot of interest. Everyone seems into this. It brings together multiple disciplines as well, looking at federal regulatory permitting frameworks for the MS4 permit, which I assume Amesbury has an MS4 permit. Eight of the NH communities are either partially or wholly in the Powow watershed. There are many more issues than just water supply, but by doing it jointly as a management plan holistically across the border, It will probably address many of these issues, not just the water supply. I'd like to keep you informed on our progress moving forward, and maybe see you again in August with a proposal in hand, maybe some funding lined up. Once I draft a proposal, I'd like to send it out with a letter to everyone, including the mayor and others to see just how much support and importance this has to folks. Protecting the town water supply is a primary priority for the city. So any monetary assistance for the project would be great.

**Kinsey Boehl:** I know there have been long standing discussions with Lake Attitash and Lake Gardner Associations about things like algae bloom that occurs late in summer. A lot of it attributed to cross border movement of phosphates and nitrates, etc.

**Julie LaBranche:** In NH, the majority of the pollution comes from non-point sources, like septic systems, agricultural runoff, and a couple of industrial sites that contribute to impairment. The majority of the land, 90% of it in NH and Amesbury, is zoned residential, so that is a lot of septic systems, and many more that could be built. Hopefully, with guidance and regulatory changes regarding how subdivisions are done, perhaps using larger buffers, and separation distances from surface waters would go a long way towards preventing further pollution in the future, while still allowing a lot of that land to be developed. The other part of the management plan, too, is to look at opportunities for restoration; looking at places where water quality can be improved, riparians can be restored and water quality can be improved over time, also as part of the management plan.

**Introduction: Potential Candidate for Conservation Commission (LaBranche)**

**John Lopez:** Ms. LaBranche spoke to me about possibly joining the ConCom and has expressed interest in submitting an application, at least a month ago.

**Julie LaBranche:** I think I have to do a little more homework and find out just how much of a commitment this is. I was the City Planner for Newburyport for several years. So I know MA. General Law, or I used to anyway, nine years ago. I'll talk to John a little more, and perhaps submit my resume. I was a Planner for 16 years. So thank you for all your efforts.

**BRIEFING: Clark's Watershed Association - (Healy)**

**Matt Healy, 101 Elm Street:** I'm here to introduce myself, along with Tom Murphy, who are working to form the Clark's pond Watershed Association. We're in our infancy, hear to start a relationship and take direction and guidance from ConCom as to how we move forward. Our goal would be to be an association of residents who advocate for Clark's Pond Watershed and Back River for Clinton Street to the Powwow River, in order to ensure the ecosystem is sustainable as a source of natural beauty, recreation and wildlife habitat. We don't really know what Clark's Pond Watershed Association is yet, but we are both passionate about the environment and want to see that body of water maintained. We come here now with no set plan yet is that one of the things we know we want to do is potentially start pulling the invasive water chestnut. So I wanted to talk, get your blessing, recommendation on how we go about that.

**Tom Murphy, Spring Street:** By mid summer each year, Clark's pond is covered with exotic, invasive water chestnuts. I guess one way to get rid of them is to pull them. They are annuals, so if we pull them up, they don't re-seed. We want to start pulling them. We will start organizing people around Clark's pond to pull water chestnuts. They are easily identified, and we can work and connect with each other and get it done.

**Matt Healy:** We realize it is an uphill battle, as they seem to multiply quickly. But we want to do it the right way, and not get a cease and desist.

**John Lopez:** It's an interesting question. I don't know if a permit is needed to manually pull an invasive species like water chestnuts from Clark's pond. I sent a text to my DEP contact a minute ago, to see what she has to say. Hopefully I get a response.

**Michael Bik:** I live on Lake Attitash, and we have a group of people that pull a bunch of it out using kayaks and on Back River once a year and pull it out, but it comes back. We get buckets of it and take it to the Amesbury landfill. We want to make sure it is well away from water.

**Kinsey Boehl:** I don't think there is anything in the local Amesbury Wetlands regulations on this.

**Steve Langlois:** I think the best thing you've done is at least come before us to discuss this and haven't started pulling things out until you did discuss it. I can't give you the information on what you can or can't do.

**John Lopez:** We had a side bar discussion with two of the best minds in the room on wetlands issues. I haven't gotten a text back yet from my DEP contact. What we've been able to determine is that water chestnut is not attached to the bottom of the pond, it floats.

**Steve Langlois:** John, we as a board cannot recommend what these people can do. So where do we steer them. Even right now, to ask DEP a question at 8 PM is iffy.

**John Lopez:** At least apply for an RDA. But timing is a key issue. One thing to consider is that we have a special meeting on June 17, if the applicant could entertain submitting an RDA by then. It is really a beneficial proposal.

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**Steve Langlois:** Well, we're talking about beavers in the first meeting. That is not usually a short subject, and I only have so much time that Wed. morning to meet.

**John Lopez:** They would have to get an RDA, a streamlined permit for request for determination of applicability.

**Steve Langlois:** So you could give John's office a call tomorrow and work something out. We just have to do things in the right order. I love the idea.

**Bruce Georgian, 19 Unicorn Circle:** As chairman of lakes and waterways committee, I want to mention that Tom did come to our lakes and waterways meeting this month and presented us with his proposal for forming an association, just to keep us informed, out of courtesy. Unanimously we supported him in this plan. We'd love to see waterways get organized and everyone pitch in. I can't speak for the legality, but certainly we fully support the practicality of pulling the water chestnuts. We hope it is expedited and allowed to do this.

**Kinsey Boehl:** Whatever we do decide, if it comes to an RDA, we should probably communicate what happens to the other lakes and waterways folks in the city. As far as "do you need an RDA or not?" we support doing it, but just keeping legal on it.

## CONTINUED BUSINESS:

**NOI #002-1088 – Old Merrill Street (Toth) Continued to July 6.**

**NOI #002-1096 – 127 Kimball Road (Scimone) Continued to Aug. 3**

**Request for an Amended Order of Conditions #002-1079**

**39 & 39A Water Street & 33 Oakland Street**

**(Boston Gas Co. D/B/A National Grid- Continued to July 6**

**RCoC - (#002-0704) 60, 75 & 77 Merrimac Street (Hatters Point Marina Parking, LLC) Continued to July 6**

**NOI #002-1116 – 219 Lions Mouth Road #RR (McCarthy ) Continued to July 6.**

**NOI #002-1115 – 13 Lake Shore Drive (Greenfield) Continued to July 6.**

**NOI #002-1117 – 60 Pleasant Valley Road (Corey) (continued to the end of the meeting tonight).**

## NEW BUSINESS:

**Request For Determination Of Applicability : 10 Jordan Lane - (Jellison)**

**John Lopez:** This is an RDA proposal to replace a deck that was original to the house, with existing foundations. So it is a proposal to replace a deck to an existing single family house. Specifics: the proposed worksite is about 100 feet from an intermittent stream, so that makes it jurisdictional. It is also a detention basin as part of the RDA. The applicant has provided a nice architectural plans, silt sock as proposed is more than adequate. I consider this to be a minor project worthy of a negative determination pursuant to the submitted plan. The caveat here is that DEP is yet to issue a DEP file number. As such,



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we're legally unable to make a motion to approve or deny the project. We anticipate having a number for the July 6 meeting. We can open the discussion, the applicant is here, and the property owner can brief ConCom on the project. Just so ConCom gets the jist of what this entails, if there are any outstanding issues to bring to the property owner's attention, but legally we are obligated legally to continue until a file number is issued.

**Steve Langlois:** So what is it about your deck that concerns you about whether or not it is in a jurisdictional zone?

**David Jellison, 10 Jordan Lane:** The deck replacement project, we got a contractor to a permit to replace the deck. In pursuing the permit, the building inspector requested that we validate that there isn't any kind of a wetland issue before approving the permit as presented.

**John Lopez:** If I may correct myself, this is a request for determination of applicability. There is no DEP file number that is necessary for you to reach a negative determination. If you feel a positive determination, then you would go to a notice of intent, but an RDA does not require a DEP file number. So if ConCom has no objections, this project could receive a negative determination this evening. Does the property owner / applicant have the Legal Notice of abutter notification? (Jellison: yes, and handed those over to each of the certified abutters, as well as notice in the newspaper more than 5 days in advance).

**David Jellison:** I do have wetlands at the back end of my property. I am taking precautions, not only in erosion control, but also materials being used to minimize the impact on the environment and choosing recycled materials requiring no stains or anything like that.

**Motion was made by Kinsey Boehl to make a negative determination of applicability for the proposed deck installation at 10 Jordan Lane. Motion was seconded by Alan Corey.**

**John Lopez:** Point of discussion, I'd like to, if ConCom agrees, have included in that motion a sign measuring 2 feet by 3 feet, reading ACC -10 be established and visible from a public way for the duration of the project.

**Kinsey Boehl:** I'll amend the motion.

**Vote was unanimous for the negative determination.**

### **Request For Determination Of Applicability: 103 Whitehall Road (Morel)**

**Kinsey Boehl recuses himself as an abutter.**

**John Lopez:** This is an RDA pursuant to an Enforcement Order issued at the last meeting by ConCom, requiring the applicant to submit the RDA. The applicant has followed through.

**Tom Hughes, Hughes Environmental Consulting:** I'm here on behalf of Peter Morel, with an RDA for an above ground pool. The pool location is 75 feet from the edge of bordering vegetated wetlands, along the edge of Lake Gardner off Whitehall. The GIS graphic here shows the wetland line, which follows a wall on property and then runs through the lawn about 4-5 feet from the edge of the lake. There is a disturbed area here, which the pool contractor had thought was exempt. We had secured a letter allowing an exempt pool to go in within 100 feet, and there was an error with the contractor, because this was a flatter area that appeared to be more appropriate to put the pool instead of cutting more deeply into the bank outside the buffer zone. So this area is disturbed. There is a small stockpile outside of the buffer zone, where the sod and a little bit of loam was removed. Here are photos of the disturbed area. This is a photo before the disturbance.

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More photos, the stockpile area, and after getting a call from John about his concern over the disturbed area of the site, so I immediately had them beef up the silt fence line with hay bales and since there have been additional hay bales put around the loam/sod pile, even though that is outside the buffer zone. This was just an error. My client is usually very prudent about pursuing approvals. So we'd like to ask for a negative determination allowing the above ground pool to be installed in the location that has been disturbed.

**Motion was made by Michael Bik to approve a negative determination on 103 Whitehall Road for Morel. Motion was seconded by Alan Corey.**

**John Lopez: I ask that the motion also include the requirement that the applicant install a sign measuring 2 X 3 feet, reading ACC 002-103 placed visible to public way during the duration of the project.**

**Vote for negative determination was unanimous.**

### **NOI #002-1118 – 36 Kimball Road, #RR - (Aspeslagh)**

**Chris Bartlett, recent resident of Amesbury, volunteering on this project. I'm an engineer by trade. I offered my services on this project.** In association with the Greenbelt, along with Lake Gardner Improvement Association, and Amesbury Trails, this is a collaborative effort to improve a section of trail through the area known as the great swamp. We believe the minor disturbances to the wetlands that are temporary are offset by the great benefits of this widely used pathway that connects the town forest on the south side of Woodsom Farm, along with the trail network that I'm sure you are all aware of. The project is improvement of about 300 feet through an existing trail, so there is no tree cutting to be done. The improvement is due to this being a widely used pathway throughout the year. We believe putting in a raised walkway or make shift bridge would greatly improve and minimize negative impacts in the long term. The design is driven posts, so no digging of post holes by machinery. So the actual impacts to the wetlands, both temporary and permanent, would be minimal. No heavy machinery, to be done by hand. That is the project. The grant was given to us by Essex National Heritage area, funding a lot of the second part of the project.

**Kinsey Boehl:** How do you access this area?

**Chris Bartlett:** There is a public access through an easement post, when Ashley Drive was subdivided as a public access easement, so you can get through the existing trails system. As far as Quimby Lane, another cluster subdivision, has a secured area to trail system and through Woodsom Farm. All these dash lines are trail systems that have been mapped thoroughly, so that is the access.

**Ken Aspeslagh, 195 Market Street:** The Ashley Drive access is where we would get in there to bring in the materials, but the main access would be from the town forest trail network.

**Steve Langlois:** Looking at photos, you're actually going through some wet land, correct?

**Chris Bartlett:** Absolutely. From my understanding, it is wet and that means real wet, with 2-6 inches of standing water at some points. Naturally, in dry season, it does dry up, but usually pretty wet.

**Steve Langlois:** Well, you'll be driving some piers in it. Is your work crew going to be working in this line or backwards through the water? Are people stepping all over the side ?

**Chris Bartlett:** We estimate that the existing trail is roughly around 12 feet wide and has been cut. What we propose is much narrower. Even with temporary disturbance of people

stepping over, I wouldn't expect it to go beyond what has already been somewhat disturbed. We'd be amicable to whatever recommendations you might have.

**Ken Aspeslagh:** This is the track of an old ancient road through the swamp. This is probably the narrowest spot on the whole thing. There are also several homemade little boardwalks so you can get through in the wet season. Where those end, people just trample through the plants. We're hoping to get everybody onto a raised bed so they don't get into the swamp as much as they do now. We are going to be taking advantage that this is Essex County Greenbelt land, and they have built thousands of these around Essex County. Their stewardship person, Dave Rimmer, knows all about how to do these things and has gotten them approved in other towns. They know what kind of wood to use, etc.

**Steve Langlois:** I assume you'll have a maintenance plan for fixing boards or whatever?

**Chris Bartlett:** We don't as yet, but if that is something the ConCom would like to see, we can do that. We can submit something to cover things like spot repairs.

**John Lopez:** If I may provide an answer re: type of wood: Section 21.4 of the Amesbury Wetlands regulations spells out in Subsection 4, 21.44 spells out the type of wood acceptable or not acceptable. It says no creosote wood or CAA treated wood (copper, chromium, arsenic treated wood) cannot be used. Modern pressure treated lumber has none of that in it anymore. What they are proposing is in accordance with our performance standards. The issue is that DEP still has this project under review. DEP will be the first to tell you not to wait for DEP to finish their review. But if ConCom were to approve this, and they did issue some comments wanting some changes or additional information, and changes had to be made, then the applicant would come back to us for a change. So there is high risk / high reward. It does not appear via National Heritage that there is any endangered species map of 2008.

**Motion was made by Michael Bik to continue this to the July 6 meeting. John Lopez will draw up a draft order of conditions, if I can get an electronic copy of the approved plans, (architectural drawings, etc. to be included as an exhibit in the draft order. Motion was seconded by Alan Corey. Vote was unanimous.**

**NOI#002-XXXX – 68 Lake Attitash Road - (Hallissey)**

**Michael Bik recuses himself as an abutter.**

**John Lopez:** The applicant is providing us with legal notice and abutter notification. This is a Notice of Intent submitted for a proposed dock and replacement set of stairs. The dock details have been included. The resource areas here would be the lake. The dock will be anchored, so we're dealing with some land under water bodies, as well as the bank. Those are the resource areas. The dock, as proposed, meets the regulations in the performance standards, Section 21.4. The type of wood used for the stairs meets the standards. I believe the dock will be aluminum, so there is no issue there.

**Ellen Hallissey, 68 Lake Attitash Road:** I bought the house two years ago, and there was a dock there. It was out of the water and rotted. I got rid of it. The stairs go right into the water that exist now. They are rotted, so they need replacing. I've spoken with DEP who gives the Chapter 91 permits, asking him what I need to do, etc. I gave photos of the old dock and existing stairs. The dock comes in three ten foot sections, L shaped. The steps will be made of composite.

**John Lopez:** The dock no longer exists, as it has been removed, but it would be, for legal purposes, it would be the proposed installation of a new dock along with the replacement

of the existing stairs. But there were no details on the stairs, how the stairs would be installed. We're dealing with a bank, and the bank is a protected resource, so it receives an elevated level of regulatory review by the department. In addition, this has not yet entered the DEP data file as a NOI, so they haven't issued a file number, nor have they even begun a review.

**Steve Langlois:** So we really can't move on this tonight?

**John Lopez:** No, other than providing the applicant with comments, if ConCom wants anything in addition to what has been submitted. I would recommend that the applicant submit a plan for the stairs and what type of material it will be. But document how the wood is treated. Also, if the applicant could have the contractor take measurements and provide them to the ConCom with plans of what is going to be installed to replace the existing stairs, and how and where on the bank. We need documentation. Are the stairs pre-fabricated, or built on the bank, exposed soils, etc. While we're at it, perhaps we could get a construction sequence, giving us an idea of how long this will take. Maybe include no installation during rain events to minimize erosion.

**Alan Corey:** Have the contractor supply you with drawings of what he is going to do and how he will do it. Also, describe that the dock is removable and you will pull that in for winter.

**Kinsey Boehl:** So in the OoC, is that something to be included there, as far as storing the dock for winter outside the buffer zone?

**John Lopez:** Yes, I usually copy and paste the recommendations that DEP has in their guidance documents, Small Docks and Piers, with no storage within a buffer zone, etc. We should also allow DEP the option to review it and provide comments. So you would continue this to July 6th requiring the applicant to submit additional plans on the stairs, including dimensions, type of material, and a construction time frame, and installation method.

**Motion of "so moved" was made by Alan Corey. Motion was seconded by Kinsey Boehl. Vote was unanimous.**

#### **NOI #002-XXXX – 128 Kimball Road (Swift)**

**Michael Seakamp, Seakamp Environmental Consulting:** I represent Dan Swift for the demolition and re-construction of a single family house within the riverfront area of the Powow River off Kimball Road. Its about 9 acres totally, but this is sort of a peninsula. The proposal is to remove the house and the garage and replace it with a smaller structure. So the proposal is going from approx. 3000 square feet of impervious down to 2142 square feet of impervious, so a total of 29.5 % decrease in impervious area. Then, as a bonus, we'll be removing the septic system and connecting to the sewer. This will be a net gain for the environment. We'll not be getting any closer to the water.

**Kinsey Boehl:** Would that not require a waiver request to build that proximity to the Powow River?

**Michael Seakamp:** Well, we're not getting any closer than what currently exists. As for digging for sewer, Mr. Swift has information on that. He said it's going to be horizontal drilling.

**Kinsey Boehl:** I think we still require a waiver for demolition.

**John Lopez:** Working within the 25 foot no-disturb, under the bylaw.

**Michael Seakamp:** Oh, ok. We'll put together the waiver request for the next meeting.

**John Lopez:** Regulations require the waiver request and an articulation as to why the request is being made.



**Alan Corey:** So we will need a detailed plan of the house and silt fencing and all that.

**Michael Seakamp:** We have the proposed erosion control on the plans.

**John Lopez:** Is the applicant proposing landscaping?

**Michael Seakamp:** The site is landscaped extensively already. It's all maintained as lawn. There is also a garage there that will not be replaced. There is no plan for runoff, at this point. The ground is all sand. The FEMA flood zone, the engineer tells me it's not in the flood zone. Elevation is about 96 feet for the house. There is no mitigation and removal of the septic system is mitigation in itself. I'd recommend a site walk by ConCom.

**John Lopez:** I'd just recommend a peer review pursuant to state and local, to determine whether the delineation is accurate or if it needs to be changed, because we're dealing with such a short distance to the river, it'd be worthwhile, and I suggest either BSC or Mill River for consulting. With an NOI, an applicant can submit a proposed wetland line. So if ConCom were to approve this, then they would be also approving the wetland line. Typically, the ConCom just confirms the wetland line through their own consultant. But there is no DEP file number yet, so if the ConCom doesn't want a peer review, so be it. If it wants the review, also keep in mind that you are hooking into the town sewer line, so that would be part of the review, making sure it is being done in compliance with the wetlands act local ordinance, and to confirm to FEMA that this site is out of the flood zone, and to confirm wetlands delineation.. If the wetlands line changes, because it is such a small margin of error here, it could affect the proposed project. So, ConCom can elect to go with a peer review or not to. But if it chooses to go with a peer review, timing is an issue. The applicant would like some certainty by July. If we postponed this, then the ConCom does a site visit that yes, I think we need to confirm this wetland line, so I think we can have a peer review done most likely by July. And since this is in the Powow River watershed, it needs to go to the PLB for review as well, since it's in a watershed district. The applicant needs to follow up on that. It may not be in a watershed district. The plans are in city hall. I'll ask the planner tomorrow and let you know.

Section 21.7 of our regulations, structures, no mitigation is sufficient to allow a structure on a wall type foundation less than 50 feet to a resource area, so we're talking less than 50 feet, more like 25 feet. And this will require a waiver. So actually, we would need two waivers. The ConCom may allow a structure on pilings within 100 to 35 feet. But this is not open pile, this is on a slab. So if the ConCom made its discretion allow for a structure on an open pile foundation within 100 to 35 feet of a resource area, so that is applicable. The wall type foundation less than 50 feet is not applicable, because it is going to be elevated.

**Kinsey Boehl:** I think we need more detail on the construction methods and materials. There is nothing on the application that says its on an open pile foundation, or what kind of foundation.

**Michael Seakamp:** When we discussed it, it was going to be on a slab. (Mr. Swift spoke from his seat in the audience and was inaudible).

**John Lopez:** If the commission does its standard peer review motion, to review the project as it relates to the wetlands act, local ordinance, and include the engineering component, just insure that the hook up is done properly. It is actually in the driveway, which is dirt.

**Kinsey Boehl:** What if we looked at the house being placed 5 feet back. How does that effect the ...would we still need a waiver doing that? I don't think so.

**John Lopez:** That would go back to open pile foundation regulations, I'd think. If you went with an open pile at 35 feet or less, 35 feet or less would require a waiver. But the demolition would be covered in the construction sequence in the plan, which also is not included in the proposal. So how would ConCom like to proceed?

**Steve Langlois:** To me, there are two ways you can go about it: either leave it, or go with a third party review. Your choice. It's beneficial for us and to you to get a third party review, by someone who knows what they're talking about.

**John Lopez:** If you just bought the house and only did interior work, you'd be all set, other than an NOI for the sewer hook up.

**Michael Seakamp:** What is the deadline for getting more information in to you for the next meeting?

**John Lopez:** June 15.

**Michael Seakamp:** We'd like to revise the plan and give you additional information before we agree to a peer review. Then we have to the 15<sup>th</sup> to submit information before we need to decide on a peer review.

**Dan Swift:** We will go with a peer reviewer.

**Motion was made by Kinsey Boehl to have the undetermined NOI at 128 Kimball Road go out for two bids for peer review (Mill River and BSC0 for review under the Wetlands Protection Act, and the Amesbury Ordinance, with consideration to sewer, wetlands delineation confirmation, foundation design and the house itself.**

**Motion was seconded by Alan Corey. Vote was unanimously in favor.**

**Motion to continue this to the July 6th meeting by Kinsey Boehl, seconded by Michael Bik. All in favor.**

#### **NOI #002-xxxx – 20 Woodwell Circle - (Tonks)**

**Taylor Turbide, Millenium Engineering:** I'm here on behalf of Brett Tonks. I'm here regarding the installation of a temporary dock system at 20 Woodwell Circle. The existing property was subdivided in 1999 via Cammett Engineering. It is shown as lot 9 on said plans, approx. 19000 square feet. As the property stands today, we have an existing single family located towards the front of the property, well over 100 feet from the lake. The line has been delineated, it follows the top of the bank along Lake Gardner by West Environmental (Mark West). Currently, there is an existing footpath being 3 feet wide that runs down to the lake. There is an existing worn out staging area. Our purpose is to use that existing area, so no new disturbance of soil or vegetation will take place. We'll be installing a temporary float system which is a 4 X 5 foot ramp with no steps to it. It'll be two 4X15 foot sections that run out, and then one 12X15 foot section out on the lake. The vegetation in the lake is constantly trampled by swimming, boating, etc. By installing this structure, it'll actually improve the amount of disturbance. The area we are connecting to the lake on is a worn dirt area bank on the lake with no vegetation. Floats are aluminum and is not attached in any manner. It will go in each spring and come out each fall. The end of the system has wheels on it about 24 inch diameter wheels. In the water, it sits on feet.

**Motion was made by Kinsey Boehl to continue this to the July 6 meeting. Until we get receipt of an NOI number, comments from DEP and Endangered Species folks. Motion was seconded by Alan Corey. Vote was unanimous.**

#### **NOI #002-1119 – 92 Lake Attitash (Ryan)**

**John Lopez:** We received e-mail abutter comments from Beth Sloan and dated May 31, 2015. She provides some comments and she asks a number of questions, and provides some recommendations that she's like the ConCom to pursue. This document is now placed into public record.

**Tom Hughes, Hughes Environmental:** I just handed you an existing conditions plan that was used in the development of the engineering plan that you have that was submitted with the NOI. The reason I gave you a copy of the existing conditions plan was, in part, due to the correspondence you received. First, this is an area where repaving was done without a permit. We have before and after photographs. You can see a triangle that was grass, but in this photo, it is paved, and a little area over here that is paved. These are reflected on a survey done on the property in 2010. A copy of that is included in the NOI. Our surveyor went out and surveyed the limited pavement, made a comparison, and calculated the areas of pavement. Also seen in these photos is the tremendous amount of sand after snow melt on the driveway and general area. Because of the driveway slope, when you get sand on it, it gets washed down. It has buried the bottom step of the set of stairs that goes down the right of way to the lake. In fact, you can see the gas shut off valve in that photo. It is also in the same location in this picture, but you can't see it, as it is buried in sand. I want to go through what we are proposing, then we'll try to go through the correspondence you received, and respond to it. Our existing conditions plan shows two areas of additional pavement: one at 45 square feet and the other at 24, so a total of 69 square feet. After getting that, I asked the engineers to add some square footage and then come up with a way to deal with the storm water from that. So what is proposed is to retrofit the installation with a trench drain, which is like a pre-cast concrete structure that has a grade on top, and its like a trough. The water will enter that, sand and sediment will settle out, and the water will flow out a pipe in one end of it. The water will go through that pipe into an infiltration chamber in an area of lawn behind the wall that is next to the stairs going down to the lake. I can show you that area behind this wall, the infiltrator and photograph. The second plan sheet gives you the details, like showing what a trench drain looks like. They catch storm water before it goes out into the street. Then it goes into an infiltration chamber. This has been designed to meet the 100 year storm for a 100 square foot area of pavement. That may not sound like much, but that is treating more than what was added. Then when you think about what that means, in a one inch storm, it is treating 700 square feet, because a 100 year storm is 7 inches of rain. In a typical storm like we're having tonight, it is a constant storm but not something where we get 7 inches of rain in an hour. It is going to handle a lot of that water. It is much more than a 100 square foot area, while removing sediment from all of the water coming down. Water cannot get past the trench drain effectively. Most of the water from the entire driveway is going into the infiltrator pre-work being done. That is a vast improvement over existing conditions. We're working with the city to do what they should be doing, which is direct storm water off of people's property, including the installation of a berm. One comment in the e-mail you received was, "a berm should not just direct water onto the neighbors." We agree with that. We'll work with the city to properly install a berm and support the installation of the berm all the way to the nearest storm water structure. That is where the storm water belongs, going into a catch basin, not running over anybody's property. So the berm would go here to protect Mr. Ryan's property from water, but from the e-mail, it sounds like the nearest catch basin is somewhere down here. So the city has to take a look at the grades, and see where berms need to be installed to direct water, so it is not trespassing on other's

properties. Re: concerns raised in the e-mail. Regarding property ownership: the surveyors and I looked back to the original deed where this property was taken out of subdivision, because the original deed did not retain ownership of the right of way, through passages of deed, under MA state law, the ownership is to the center line.

**Kinsey Boehl:** As far as the comments addressed in the e-mail regarding ownership, or easements, or anything like that, it is non-jurisdictional to us.

**Tom Hughes:** The only reason I'm addressing that is because to submit an NOI, you need to demonstrate a level of ownership. It's not a conclusive level of ownership, but enough that you can sign the application. We've got a stamped plan here where the surveyor indicates that Mr. Ryan has the interest to the center line of the easement. All of the work that was done, and all of the retro active work that we are proposing, is within that property.

**Alan Corey:** I read the letter by Ms. Sloan, and her deed says that she owns the rights to that right of way. It doesn't say it on Mr. Ryan's deed, but it does on hers. Somebody should check and do a little more research, because her deed says she has the rights to that right of way. If that's the case, we can't do anything without her permission.

**Tom Hughes:** We can look at her deed. We don't have comments from DEP yet. We do have a file number. So ConCom could act tonight, but we want to get this right. It also depends on the order on which it was sold off of the property. If they sold this deed, and this gets into what the surveyor has to deal with, before they sold this deed, then they didn't have the rights to deed her all of it. So she would have the center line, if they sold that property first, and deeded it out, I'm not sure where that ends up. With regard to that, if we can park that issue aside, assume for right now that we do have that, and if not, we'd have to either talk with the neighbor to get permission, or otherwise. Even removal would require approval.

**Kinsey Boehl:** The proposed mitigation, the infiltration device (trench drain), that stuff is not currently installed ?

**Tom Hughes:** No. We need your approval to do that.

**Kinsey Boehl:** The distance to the additional paving, what is the closest distance to the resource area?

**Tom Hughes:** I believe it is in the narrative, but it is 40-ish feet, but it is outside the 25 feet for pavement, and it is no closer than the pre-existing, which was a concrete pad at the top of the stairs. So it meets the performance standards. I'd agree that if the neighbor's deed indicates that they have some rights to the right of way, then what we have to do is have our surveyor look at that, and render a determination.

**Kinsey Boehl:** So the applicant has said that a lot of sand and road debris comes off the...

**Tom Hughes:** I think Ms. Sloan has recognized that it is an issue.

**Kinsey Boehl:** So is this thing going to fill up with sand in a year?

**Tom Hughes:** Yes. It builds up with sand. There are maintenance provisions here, but the nice thing about this, as opposed to what we suggested which was having a grass strip at the top of the stairs, it is hard to remove sand, and that grass strip won't remove sand. It'll trap some, it'll build up, and at the bottom of the stairs it builds up. With this, these are not really heavy grates, so it just pops up, take a shovel, put the sand in a wheel barrow and remove it. Mr. Ryan is proposing to put it in, and he specifically wanted something that he could easily remove / clean out the sand. It's been building up over years at the bottom of the stairs. I understand he occasionally takes a shovel out and removes some. So, right now, part of the NOI proposes to remove the sediment and sand



built up here, then reseed it. So you would no longer have to do that stuff. Now, you would just pop the lid, take a shovel, and clean it out.

**John Lopez:** And this operations and maintenance plan, if approved, would be part of the OoC as a perpetual condition, which follows the property in perpetuity.

**Steve Langlois:** So John, this is to issue an OoC?

**Alan Corey:** I see a problem with doing that right now, until we know. The abutter is saying that this is her property. Until we know that it isn't, we can't approve it without the abutter. We might have to postpone until the next meeting, because this person is saying it's her property.

**John Lopez:** There are two other issues. First, there may be abutter comments, so we should check into that and have Mr. Hughes respond to those comments. Second, I'd like Mr. Hughes to respond to Ms. Sloan's comments in writing, for the record. I think the commissioner raises a valid point, in that we need to have the property owner's signature on the NOI. That is an issue that the applicant and Mr. Hughes can pursue.

**Tom Hughes:** Re: the property owner issue: ConCom does not become land court. So if our surveyor, after reviewing that deed, still feels that he is willing to put his professional stamp, which under the Commonwealth of Massachusetts means something, on his ownership, that is the Litmus test by which the signature on the NOI goes. If it is a civil matter outside of this forum about who owns what, then that is a civil matter. But I do want to make sure that we actually do get that right. So I'd rather not close this out tonight. If any abutters have issues that I can address tonight, I will do that, and respond in writing. But if this is in her deed, then we need to go back and look at it.

**John Lopez:** It's also going through a DEP review, so we may want to continue this, pending DEP comments, if any.

**Motion was made by Kinsey Boehl to continue this to the July 6 meeting, pending DEP review and a second review by the surveyor to determine where the property line is and the abutters comments addressed in writing for entry into the file.**

**Motion is seconded by Alan Corey. Vote was unanimous in favor.**

**John Lopez:** Before we launch into our last NOI hearing, on a previous hearing for 103 Whitehall Road, as an administrative item, could ConCom please do a motion rescinding the Enforcement Order?

**Motion was made to rescind the enforcement order on 103 Whitehall Road by Alan Corey. Motion was seconded by Michael Bik. AIF.** Kinsey Boehl was recused from that vote as an abutter.

#### **NOI # 002-1117 60 Pleasant Valley Road (Corey)**

**Alan Corey, applicant, 60 Pleasant Valley Road:** Last month, I applied for a dock permit (NOI) and what was missing was a letter from the MA Division of Fisheries and Wildlife and National Heritage and Endangered Species program. I applied to the program and the letter I received back from them says, "I want to let you know that we will not be issuing a letter pursuant to the rare species provisions of the WPA 10.59 or the MA Endangered Species Act today in regard to your proposed dock at 60 Pleasant Valley Road. I am still awaiting input from my counterparts in the MA Division of Marine Fisheries. Our 30 day comment period ends July 6, 2015. You can expect a comment letter by that date." I've been told over the phone that there is no problem. I can give you copies. They cashed their check. I spoke with John, and he says if it is alright with the commission, you can approve my NOI with the stipulation that I deliver the letter from

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the National Heritage Foundation to him when I receive it, otherwise I can't do anything until I receive the letter from them.

**John Lopez:** It says it is under review by DEP, also. It has a number, it just hasn't been reviewed yet. On the DEP NOI website, and it has DEP # 002-1117 = under review.

**Motion was made by Michael Bik for NOI # 002-1117 to be continued to the July 6<sup>th</sup> meeting, pending DEP comments and the letter from the National Heritage Foundation. Motion was seconded by Kinsey Boehl.**

**Motion made to adjourn by Kinsey Boehl to close this meeting. Motion was seconded by Alan Corey. AIF.**

**Meeting was adjourned at 10:01 P.M.**